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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

FRANK C. STONEBARGER,

Plaintiff and Appellant,

v.

ROYCE M. NORTHCUTT, Individually and as
Trustee, etc.,

Defendant and Respondent.

C046113

(Super. Ct. No.
CV020943)

Plaintiff Frank C. Stonebarger sued defendant Royce M. Northcutt, individually and as trustee of the Royce M. Northcutt Declaration of Trust (collectively "Northcutt"), for declaratory relief, breach of contract and specific performance following Stonebarger's unsuccessful attempt to exercise a right of first refusal and purchase a parcel of land he was leasing in San Joaquin County. Each party interpreted the key lease provisions differently. The trial court sustained Northcutt's demurrer to the first amended complaint without leave to amend on grounds

Stonebarger failed to allege facts sufficient to state any of the three causes of action.

Stonebarger appeals from the judgment of dismissal. He argues the allegations setting forth his interpretation of the lease must be taken as true, and the trial court "improperly made a substantive decision regarding the facts of this case and the interpretation of the contract prior to providing Plaintiff with an opportunity to present evidence on the issues." Stonebarger also contends the court erred in sustaining the demurrer to the cause of action for declaratory relief because it was in addition to, not in lieu of, the causes of action for breach of contract and specific performance. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The first amended complaint alleges Stonebarger leased property from Northcutt's late husband in 1999. The lease, attached to the amended complaint as exhibit A, described the "leased premises" as "[t]he parcel of land located at 7740 East Ratto, given the county assessor's tax number 086-470-34; and the parcel of land located at 10064 Hildreth, given the county assessor's tax number 086-540-41."

Paragraph 15 of the lease set forth the lessee's right of first refusal as follows: "In the event Lessor shall receive a bona fide offer to purchase the Premises during the term of this lease and such offer of purchase shall be satisfactory to Lessor, Lessor or future owner agree to give Lessee the privilege of purchasing Premises at the price and on the terms

of the offer so made, said privilege to be given by notice sent to Lessee as prescribed in NOTICES herein, and requiring Lessee to accept it in writing and to sign a suitable form of contract of purchase within the period of 30 days after the giving of such notice. In the event of the failure of Lessee to accept such offer of purchase or sign such contract within said period, then and in that event, the privilege to Lessee herein shall thereupon be null and void, and Lessor or future owner shall be free to sell Premises to another person, firm or corporation. Should Lessee not exercise said privilege, then Lessee shall be compensated for the work and materials he has performed during that crop year. The amount of such compensation shall be subject to agreement of the parties."

In March 2003, Stonebarger received notice Northcutt had an offer to purchase the two parcels of land subject to the lease. The letter, attached to the amended complaint as exhibit C, invited him to exercise his right of first refusal. It advised Stonebarger "as to the parcel located at 7740 East Ratto Road, she has received an offer of \$405,000.00 cash. As to the parcel located at 10064 Hildreth Lane, she has received an offer of \$20,500 per acre, all cash with the exception of \$40,000.00 which will be represented by a note secured with a first deed of trust said note providing for 7% per annum interest all due and payable in 3 years."

Stonebarger alleges in the first amended complaint "there is no language in the Lease which requires [him] to purchase the entire 'leased premises' when exercising his Right of First

Refusal" and Northcutt "provided notice to [him] of two separate and distinct offers to purchase the Ratto Property and the Hildreth Property, respectively" He exercised his right under paragraph 15 of the lease "and accepted the offer terms of \$405,000.00 cash to purchase the Ratto Property as set forth in [Northcutt's] March 10, 2003 notice to [Stonebarger]" in a letter dated March 24, 2003, and attached to the amended complaint as exhibit D. Thereafter, in early April 2003, Stonebarger signed a contract to purchase the property on Ratto Road for \$405,000 in cash, and delivered the contract to Northcutt. Stonebarger's first amended complaint alleges Northcutt refused to sell the Ratto property to him for \$405,000.

In his first cause of action for declaratory relief, Stonebarger seeks a declaration he "has the privilege of purchasing the Ratto Property for \$405,000.00 cash." The second cause of action for breach of written contract seeks economic and compensatory damages in excess of \$25,000. In the third cause of action, Stonebarger seeks an order that Northcutt sell the Ratto Property to him for \$405,000 in cash.

Northcutt demurred to the first amended complaint. Under her interpretation of the lease, the right of first refusal applied to both parcels. Northcutt received an offer to purchase the entire leased premises, that is, two parcels, from a single purchaser. Because Stonebarger offered to purchase only one of the parcels, he did not meet the offer that was

made. Northcutt argued the failure to comply with paragraph 15 was fatal to all three causes of action.

DISCUSSION

On review of a judgment of dismissal after the trial court has sustained a demurrer without leave to amend, we must accept the truth of all facts properly pleaded. (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 579.) We also accept as true all facts that may be implied or inferred from the facts expressly alleged. (*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403.) However, where there is a conflict between the allegations of the complaint and facts that appear in an exhibit, the exhibit takes precedence, and we accept as true the facts set forth in the exhibit. (*Holland v. Morse Diesel Internat., Inc.* (2001) 86 Cal.App.4th 1443, 1447.)

Here, the terms of the lease and the written notice of the third party offer, attached as exhibits A and C, contradict Stonebarger's allegations that: (1) the lease did not require him to purchase the entire leased premises when exercising his right of first refusal; and (2) Northcutt provided notice of two separate and distinct offers to purchase the Ratto and Hildreth properties, respectively. The lease begins by defining the "leased premises" to include both parcels. Paragraph 15 of the lease states that under the right of first refusal, the lessee has "the privilege of purchasing Premises at the price and on the terms of the offer so made." The notice states Northcutt "received an offer to purchase."

Stonebarger failed to meet the terms of "the offer so made" by responding with an agreement to purchase only one of the two parcels. Accordingly, there was no breach of contract as a matter of law. Nor was Stonebarger entitled to specific performance of that contract.

We also conclude the trial court properly dismissed the cause of action for declaratory relief. Code of Civil Procedure section 1062 provides the remedy of declaratory relief is "cumulative, and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party to such action, and no judgment under this chapter shall preclude any party from obtaining additional relief based upon the same facts." However, a cause of action for declaratory relief will not lie where there is an accrued cause of action for breach of contract. Witkin explains "[d]eclaratory relief operates prospectively, serving to set controversies at rest. If there is a controversy that calls for a declaration of rights, it is no objection that past wrongs are also to be redressed; but there is no basis for declaratory relief where only past wrongs are involved. Hence, where there is an accrued cause of action for an actual breach of contract or other wrongful act, declaratory relief may be denied." (5 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 823, p. 279.) This case involves past wrongs -- Northcutt's allegedly wrongful refusal to sell Stonebarger the Ratto property in violation of the terms of the lease agreement.

DISPOSITION

The judgment is affirmed.

NICHOLSON, Acting P.J.

We concur:

MORRISON, J.

HULL, J.